



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

These proceedings were commenced by the claimant by filing an Application for Penalties on August 2, 1994. In his Application, the claimant alleged the respondent failed to comply with the Administrative Law Judge's Order of June 20, 1994, and further failed to make payments pursuant to an Award of Review and Modification, dated June 3, 1994.

During oral argument, the respondent raised the threshold question as to whether this Order is subject to review by the Appeals Board as there was no evidentiary record made before the Administrative Law Judge. K.S.A. 44-551(b)(1), as amended by S.B. 59, 1995, grants the Appeals Board jurisdiction to review all acts, findings, awards, decisions, rulings or modifications of findings or awards made by an Administrative Law Judge. Application for penalties is not a preliminary award. It is a separate proceeding, subject to de novo review as a final order upon written request made within ten (10) days from entry of the order. See Stout v. Stixon Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185, rev. denied 251 Kan. 942 (1992).

The scope of the Appeals Board review is "upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge." See K.S.A. 44-555b(a), as amended by S.B. 59, 1995. The Appeals Board finds that an evidentiary record is a necessary prerequisite for the Appeals Board to review an order granting or denying penalties. The claimant has the burden of proving his right to penalties pursuant to K.S.A. 44-512a. Since he did not establish a record before the Administrative Law Judge for review by the Appeals Board, his Application for Review must therefore be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that for the above stated reasons, the Application for Review filed by the claimant is hereby dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1995.

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BOARD MEMBER

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c: Robert R. Lee, Wichita, KS  
Vaughn Burkholder, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director